(20)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO. 506 OF 2006

PETITIONERS ORIGINAL DEFENDANTS

1. Punaram, S/o Thunkuram Kurmi, aged about 67 years,

2. Sanjay Kumar S/o Lekhram Kurmi, aged about 23 years,
Both R/o Village Jareli, Tah. Mungeli, Distt. Bilaspur (C.G.)

VERSUS

RESPONDENTS RESPS. 1 & 2 ORIGINAL PLAINTIFFS

1. Kusum Bai W/o Harvansh Kurmi, aged about 43 years, R/o Village Jareli, Tah-Mungeli, Distt. Bilaspur (C.G.)

2 Gayatri Bai W/o Vijay Kurmi aged about 37 years, R/o Village Bharewa, Tah. Mungeli, Distt. Bilaspur (C.G.)

3. State of Chhattisgarh Through Collector, Bilaspur (C.G.)

Present: Mr. Vinay Pandey, learned counsel for the petitioners.
Mr. Prashant Mishra, learned Addl. A.G. with Mr. Utkarsh Verma, learned Dy. G.A. for the State of Chhattisgarh.

ORAL ORDER
(Passed on 31st January 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ :

It appears to our mind that the petitioners perhaps realizing that they have no case on merit, have meekly made an attempt to assail the constitutional validity of the amendment of Section 6 of Hindu Succession Act, as amended by Amendment Act No. 39 of 2005. The

petitioners purchased subject land property from the father of respondents 1 and 2 under a registered sale-deed dated 04-03-2005. The Hindu Succession Amendment Act No. 39 of 2005 was brought into force with retrospective effect, that is to say, with effect from 20-12-2004. The subject property, admittedly, is an ancestral property and by virtue of the amendment of Section 6 of Hindu Succession Act by Amendment Act No. 39 of 2005, respondents 1 and 2 acquired right and a share in the subject property on 20-12-2004. In that view of the matter, the Court below has granted the application filed by respondents 1 and 2 who are the plaintiffs, filed under Order 39 Rules 1 and 2 of C.P.C. and granted temporary injunction.

(2) Having heard learned counsel for the petitioner, we do not find any weighty or substantive ground much less any jurisdictional flaw in the order of the Court below.

(3) Although, we could be justified in dismissing the challenge to the constitutional validity of amended Section 6 of Hindu Succession Act by Amendment Act No. 39 of 2005 for the reason that the Government of India is not arrayed as a party-respondent, even otherwise, we do not find any semblance of merit in the attack. The ground No. (i) in para 6 of the writ petition is the only ground stated to assail the constitutional validity of the impugned provision. It reads as follows:

> "(i) The amendment in s.6 of the Hindu Succession Act came into force on 9.9.05, but it was made to operate retrospectively i.e., since 20.12.04. This is violative of Art. 14 and 21 of the constitution of India as it discriminates between the persons who claim benefit on the basis of a sale-deed executed prior to 20-12-04 & those who

claim benefit after 20.12.04; and such discrimination is neither based on intelligible differentia nor it has got a nexus with the object sought to be achieved."

(4) It is well settled that it is the plenary power of the legislature to enact a law in civil law domain with retrospective effect and that power cannot be denied to the sovereign legislature. The only ground urged to assail the constitutional validity of the impugned provision is that though Amendment Act No. 30 of 2005 was enacted on 09-09-2005, it was brought into force with retrospective effect, that is to say, with effect from 20-12-2004. The attack is misconceived and not at all tenable.

(5) Resultantly, the writ petition is liable to be dismissed and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
D.R. Deshmukh
Judge